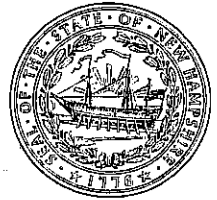




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

February 19, 2009

Senator Martha Fuller Clark, Chairman  
Energy, Environment and Economic Development Committee  
Legislative Office Building, Room 102  
Concord, NH 03301

**SUBJECT: SB 166-FN**, relative to mineral extraction, mining, and reclamation in NH

Dear Chairman Fuller Clark and Members of the Committee:

Thank you for the opportunity to testify in support of SB 166-FN, which is a comprehensive revision of RSA Chapter 12-E, the State's mining and reclamation statute. The Department of Environmental Services (DES) requested that this legislation be introduced, and we have worked closely with the Department of Resources and Economic Development (DRED) to propose language that will more appropriately balance and protect New Hampshire's economic and environmental interests.

RSA 12-E regulates the practices of mining and reclamation activities related to the removal of minerals and dimension stone at New Hampshire quarry sites. (The excavation of sand, gravel, soil, and construction aggregate are regulated by a different law, RSA 155-E.) RSA 12-E designates the Commissioner of DRED as the primary authority to implement its requirements. The chapter describes the circumstances for which a prospecting permit or mining permit is required and delineates the information required to formulate a decision for both. Duties of the operator are defined for a permitted site relative to mining and reclamation. Opportunities for public participation are provided by RSA 12-E:5.

Performance bonds are required to ensure that an adequate reclamation effort is undertaken by an operator following cessation of the mining operation (and in some cases, the prospecting effort). These bonds are based on cost estimates as they existed in the 1980s and have not been updated. Fees were established to support processing of the application and other activities related to administration of the chapter.

Enforcement and appeals provisions are included in the law to guide the Commissioner of DRED in resolving conflicts and legal challenges arising from mining or prospecting operations. However, RSA 12-E was enacted in 1979, before the creation of the Department of Environmental Services in 1986, so it provides no explicit role for the DES in addressing the environmental impacts of mining.

A number of important statutory changes are presented in SB 166-FN in an effort to update RSA 12-E to current regulatory, financial, and environmental standards. SB 166-FN reflects changes in the law proposed to establish a more collaborative process

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

between DRED and DES for evaluating mining and prospecting applications to ensure that all applicable DES permits are secured in a timely manner, to require sufficient funds be accumulated to properly reclaim/remediate a former prospecting or mining site, and to ensure that such sites are cleaned up in accordance with current environmental standards and closed in a condition conducive to future reuse.

Several definitions are rewritten, expanded, or added to clarify the law. For example, the definitions of "rock", "runoff", and "wetlands" are added. The definition of "mining" is amended to lower the threshold for permitting from sites 5 acres or greater in size to sites 100,000 square feet or greater, or 50,000 square feet or greater within protected shoreland zones. The definition of, and provision for, a mandatory "pre-application meeting" is added to institutionalize the need to convene a forum among all interested parties to discuss the proposal early in the application process. The purposes of this meeting include identifying other interested parties who should participate in the discussion, site limitations in need of resolution, infrastructure limits, operational constraints, legal interpretations, financial considerations, and other matters affecting the permitting, operation, cleanup or closure of the site and its reuse. DRED, DES, and the local planning board representative (or designees) are required to meet with the applicant at this opening discussion.

Primary authority for administering the resource-extraction portion of this chapter would remain with the Commissioner of DRED, but the role of the Commissioner of DES would be significantly expanded to address and enforce the various environmental permits and other requirements typically associated with prospecting or mining activities (e.g., wetland impacts, storm water management, terrain alteration, and shoreland protection). The Department of Safety would be added to the review team to evaluate the adequacy of any blasting plan for the prospecting or mining operation. From a resource inventory perspective, the New Hampshire Geological Survey (a unit of the DES Commissioner's Office) would be provided with the mine operator's report documenting the volume/tonnage and types of geologic materials removed by the prospecting or mining operation.

This more collaborative approach has been proposed to ensure that prospecting or mining operators obtain all of the necessary permits to protect human health and the environment, and are not allowed to prematurely abandon a permitted site without first assessing, remediating, and closing the site in accordance with all applicable federal, state, and local requirements and standards. Such activities may include, but not be limited to, the removal and cleanup of waste piles, lagoons, pipes, pools and tunnels. It may also include closure and long-term monitoring activities such as re-grading, re-vegetation, installation of groundwater monitoring wells, and the creation and implementation of a long-term sampling and analysis plan.

The bonding requirement in current law has been replaced with new provisions for financial assurance plans. The adequacy standards for financial assurance have been updated to more accurately reflect actual costs of operation, remediation, closure, and reclamation of a contemporary prospecting or mining site, with a clause calling for

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adjustments to be made to the reclamation plan's funding level every three years, or at such times as the permit/plans are amended or otherwise modified. The financial assurance in no case would be less than \$10,000 per acre of the permitted site, and must be sufficient, valid, and enforceable for the life of the permit. Financial assurance is proposed to equal at least 110 percent of the costs of reclamation, including clean up of waste piles, lagoons, and long-term monitoring.


A provision is added that calls for the Department of Justice to conduct a background investigation of the performance history and criminal record of the applicant and of its officers and directors, with a report to DRED. The penalty for violations of the provisions of RSA 12-E would be increased from \$10,000 to \$20,000 per violation.

### Summary

With the prospect of increased demand for dimension stone for roads and buildings and the national strategic need for precious minerals in even trace amounts, the likelihood that New Hampshire could face increased prospecting and mining activity in the near future suggests that RSA 12-E, not significantly revised since the early 1980s, is in need of targeted revision. SB 166-FN seeks to update the mining statute, its standards, its collaborative method for processing applications and enforcing its provisions, and the legal framework and financial assurance needed to concurrently enable the responsible extraction of natural resources, while supporting the state's economy and protecting public health and the environment.

The Department of Environmental Services supports the passage of SB 166-FN and would be pleased to work with the committee to provide additional information. If you have any questions regarding this letter of testimony, please do not hesitate to call me or Assistant Commissioner Michael Walls at 271-8806 or State Geologist David Wunsch at 271-6482.

Sincerely,

  
 FN Thomas Burack  
 Commissioner

cc: SB 166-FN Sponsors  
 George Bald, Commissioner, DRED  
 William Carpenter, DRED